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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/909,248
Filing Date: July 19, 2001
Appellant(s): BANERJEE ET AL.

John S. Paniaguas
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/09/2008 appealing from the Office action

mailed 04/23/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings

known to the examiner which may be related to, directly affect or be directly affected by

or have a bearing on the Board's decision in the pending appeal:

Appeal No. 1998-0943 in application No. 08/300,500

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection

contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is

substantially correct. The changes are as follows:

Claims 1, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable

over McCain, U.S. Patent No. 5,309,351, in view of applicants admission of Pen

Windows.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,309,351   McCain   05-1994

Applicants admission of Pen Windows

(9) Grounds of Rejection

The final rejection mailed on 04/23/2004 as paper no. 15 incorporated by reference the non-final rejection mailed on 09/12/2003 as paper no. 13. Both rejections have been reproduced below for the Board's convenience.

The following ground(s) of rejection are applicable to the appealed claims:

From the final rejection mailed on 04/23/2004 (paper no. 15) set forth in paragraph 6 spanning pages 4 and 5:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCain, U.S. Patent No. 5,309,351, in view of applicants admission of Pen Windows. The rejection set forth in paragraph 5 spanning pages 3 to 8 of paper no. 13 mailed 09/12/03 is maintained and incorporated by reference. Since the means plus function limitations do not clearly claim which subsystem or controller, view manager 200 which anticipates or Pen Windows 310 which makes the final decision, is being claimed then the admitted Pen Windows prior art teaches that the added limitations in

this 3/15/04 amendment and the 8/12/03 amendment would have been obvious to one

of ordinary skill in the art.

From the non-final rejection mailed on 09/12/03 (paper no. 13) set forth in

paragraph 5 spanning pages 3 to 8:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable

over McCain, U.S. Patent No. 5,309,351, in view of applicants admission of Pen

Windows.

This reference with an effective filing date of October 27, 1988 describes a

portable touch screen display which uses an infrared link as a connection to a host

computer implemented with either a satellite node or a local computer having

appropriate wireless node capability (column 7 lines 2-3 and column 6 line 65 to column

7 line 10). The host computer performs application processing with selectable multiple

applications (column 9 lines 27-60 and column 7 lines 4-10) and provides display

information to the portable touch screen display via the infrared link. Especially note

column 7 lines 30-33 and lines 58-60 and column 9 lines 46-47 and column 10 lines 41-

46 which describes a portable unit constructed of a minimum of parts with limited

processing capability.

Applicant amended independent claims 1 and 6 to claim *a pen mode and a mouse mode and including means for monitoring pen down events of a passive stylus and emulating the movement of a mouse and the clicking of a mouse button in the mouse mode.*

Applicant states that RC Manager 350 is the Recognition Context Manager module of Pen Windows and the description of RC Manager 350 in the last paragraph on page 20 of applicants specification describes this Pen Windows manager as determining the pen mode and mouse mode. In the paragraph spanning pages 11 and 12 a passive stylus is admitted to be used in the Pen Windows system.

Thus, the limitations added to independent claims 1 and 6 is admitted prior art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the touch sensitive scheme of McCain in view of the Pen Windows standard because McCain states at column 9 lines 2-3 that other touch sensitive schemes may be used, thus, McCain is stating that known touch sensitive schemes, such as Pen Windows, may by used in McCain's system since it is cheaper to use commercial off the shelf software than to develop custom software.

A detailed analysis of the claims follows.

Claim 1:

Pending claim 1	McCain, U.S. Patent No. 5,309,351
1 . (Currently Amended) A mobile user interface device for interfacing with a remote host computer having a wireless interface, comprising:	Hand held units 60, 61 are mobile units that interface with a host computer having a wireless interface, satellite units10, 20, 55 and the local PC 53 are the host computer's wireless interface to the hand held units. See figure 3, column 3 line 65 to column 4 line 31 and column 6 line 56 to column 7 line 10.
a graphical display subsystem including a graphical display for displaying an image;	Figure 4 illustrates the hand held unit as having a graphical display subsystem (LCD controller 35) that is for displaying images on the graphics display device, LCD screen 36, column 8 lines 6-20.
an input subsystem including a stylus for receiving from a user, positional data representing spatial positions of said stylus;	Figure 4 illustrates the hand held unit as having an input device, touch scanner 39 column 8 lines 6-9, together the display and touch scanner form a touch sensitive screen, column 8 line 9. The touch sensitive screen requires a stylus such as a pen or finger to touch the touch sensitive screen in order for the user to select graphic key pads, menu items, text, or graphic figures, column 8 lines 10-20.

a wireless communication subsystem for establishing a wireless communications link directly with said remote host computer for sending data to and receiving data from said remote host computer over a wireless communication link; and	The hand held unit's wireless subsystem 42 establishes wireless communications with the remote host computer for sending data to the host computer and for receiving data from the host computer. Column 6 line 56 to column 7 line 10. McCain teaches establishing a wireless communications link directly from the hand held unit to the wireless receiver of the host computer. The wireless receiver of the host computer is satellite 55, column 6 lines 15-35 and line 56 to column 7 line 10. Thus, McCain teaches establishing a wireless communications link directly from the hand held unit to the host computer.
a controller for controlling operations of said graphical display subsystem, said input subsystem and said wireless communication subsystem, said controller	The hand held unit's processor 31 controls functions of the hand held unit, column 7 lines 38-40. The functions controlled are inherently the display subsystem 35, the input subsystem 39 and the wireless subsystem 42.
(i) causing said wireless communication to be created;	Processor 31 causes wireless communication between the hand held unit and the host computer, column 7 lines 52-54.
(ii) causing said application program to be run on said remote host computer;	Processor 31 causes the application program to be run on the host computer by sending data in response to user selection of a menu item, column 6 line 56 to column 7 line 10.
(iii) receiving from said input subsystem said positional data,	Processor 31 receives positional data corresponding to the location the user touched on the touch sensitive scanner 39.
providing a response to said user in acknowledgement of said positional data,	Processor 31 provides a response to the user after positional data has been received in response to the user touching a display item, column 8 lines 14-20.

and transmitting over said wireless communication link from said application program data representing said image, and	The host computer transmits screens of images to the hand held terminal, column 7 lines 6-15.
causing said graphical display subsystem to display said image on said graphical display,	Processor 31 causes the LCD control 35 to display images on display 36 in response to the received screens.
said input subsystem having a pen mode and a mouse mode and including means for monitoring pen down events of a passive stylus and emulating the movement of a mouse and the clicking of a mouse button in the mouse mode.	Applicant states that RC Manager 350 is the Recognition Context Manager module of Pen Windows and the description of RC Manager 350 in the last paragraph on page 20 of applicants specification describes this Pen Windows manager as determining the pen mode and mouse mode. In the paragraph spanning pages 11 and 12 a passive stylus is admitted to be used in the Pen Windows system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the touch sensitive scheme of McCain in view of the Pen Windows standard because McCain states at column 9 lines 2-3 that other touch sensitive schemes may be used, thus, McCain is stating that known touch sensitive schemes, such as Pen Windows, may by used in McCain's system since it is cheaper to use commercial off the shelf software than to develop custom software.

Claim 6:

Pending claim 6	McCain, U.S. Patent No. 5,309,351
6. (Twice Amended) A computer system comprising:	The hand held units, local PCs and host computer are a computer system.
A hand-held interface device comprising	Hand held unit 17, 60, 61.
(i) a display device;	Figure 4 illustrates the hand held unit as having a display device, LCD screen 36c column 8 lines 7 and 25.
(ii) an input device;	Figure 4 illustrates the hand held unit as having an input device, touch scanner 39 column 8 lines 6-9, together the display and touch scanner form a touch sensitive screen, column 8 line 9
(iii) a wireless receiver and transmitter circuit for transmitting data from said input device to an application program running on a remote host computer and	The wireless interface circuit 42 is a wireless receiver and transmitter circuit, column 7 lines 52-54, that transmits data from the input device to an application running on a remote host computer, column 6 line 56 to column 7 line 37 and column 7 lines 61-68.
receiving a response to said data from said application program running on said remote host computer; and	The hand held unit's wireless interface circuit 42 receives data from the application program running on the host computer, column 7 lines 6-10.
(iv) a controller for providing an image on said display device said controller being operable in a pen mode and a mouse mode and including means for monitoring pen down events of a passive stylus and emulating the movement of a mouse and the clicking of a mouse button in the mouse mode; and	The received data from the host computer is displayed on the LCD screen, column 7 lines 6-10. Applicant states that RC Manager 350 is the Recognition Context Manager module of Pen Windows and the description of RC Manager 350 in the last paragraph on page 20 of applicants specification describes this Pen Windows manager as determining the pen mode and mouse mode. In the paragraph spanning pages 11 and 12 a passive stylus is admitted to be used in the Pen Windows system. It would have been obvious to one of ordinary skill in the art at the time the

	Continuation of previous page
	invention was made to modify the touch sensitive scheme of McCain in view of the Pen Windows standard because McCain states at column 9 lines 2-3 that other touch sensitive schemes may be used, thus, McCain is stating that known touch sensitive schemes, such as Pen Windows, may by used in McCain's system since it is cheaper to use commercial off the shelf software than to develop custom software.
a remote host computer having a wireless receiver and transmitter circuit for communication with said hand held interface; and	The host computer has a wireless receiver and transmitter circuit at the satellite or the local PC. Column 6 line 68 to column 7 line 3.
(ii) means for modifying said image.	The host computer modifies the image by sending screens of data which show the status of the application program running on the host computer and which request data input, column 7 lines 6-10.

Claim 7:

Pending claim 7	McCain, U.S. Patent No. 5,309,351
7. (Twice Amended) A computer system as recited in claim 6,	
wherein said wireless receiver and transmitter circuit is configured to be accessed by said remote host computer as a shared resource on a local area network.	The satellite units 10, 20, 55 and the local PC 53 are a shared resource on a local area network accessed by the host computer. See figure 3, column 3 line 65 to column 4 line 31 and column 6 line 68 to column 7 line 3. Network #1 and network #2 are local area networks. Satellite 55 is connected to network #1, column 4 lines 3-6. Column 2 line 60 describes Ethernet, MAP and token ring networks.

(10) Response to Argument

Appellants arguments at pages 7 and 8 have been fully considered, but, they are

not persuasive to overcome the 35 U.S.C. 103(a) rejection of claims 1, 6 and 7 as being

unpatentable over McCain, U.S. Patent No. 5,309,351, in view of applicants admission

of Pen Windows.

Appellants initially asserts in the first paragraph of the arguments that McCain

fails to teach various claim limitations. Specifically appellants assert:

> All of the claims recite that the interface includes "a controller
> having a pen-mode and a mouse-mode" which includes "means for
> monitoring pen-down events of" (a) passive stylus and emulating the
> movement of a mouse and the clicking of a mouse button in (a) mouse
> mode and means for translating pen events in a mouse mode and means
> for switching between a pen mode and mouse mode." It is respectfully
> submitted that the McCain, et al. patent does not teach or disclose such a
> configuration.
> .....
> For example, the McCain, et al. patent does not disclose a system
> for ***emulating the movement of a mouse and the clicking of a mouse
> button.***

This assertion is the basis of the obviousness rejection set forth in the final rejection

mailed on 04/23/2004 and the non-final rejection mailed on 09/12/03 since McCain does

not teach the asserted emulating the movement of a mouse and the clicking of a mouse

button.

Appellants then asserts in the second paragraph of the arguments that:

> It is respectfully submitted that is appears that the examiner is actually rejecting the claims based on information in the specification and not on the claims themselves.

This assertion is not fully understood because the claims are rejected in view of applicants admission of Pen Windows which is based on information in appellants specification.

Appellants then further asserts in the second paragraph of the arguments that:

> More particularly, the rejection of the claims is based on 35 U.S.C. § 103(a) based on the McCain, et al. patent.

This assertion is not fully understood because the claims were rejected over McCain, U.S. Patent No. 5,309,351, in view of applicants admission of Pen Windows.

Appellants additionally asserts in the second paragraph of the arguments that:

> However, the examiner's response to the Applicant's arguments, as set forth in paragraph 3 of the Detailed Action, mailed on April 23, 2004, implies that the claims have been rejected because of information the Examiner has extracted from the specification (.....).

This assertion is not persuasive because the Examiner's April 23, 2004 response to the 3/15/2004 arguments was making a technical distinction between appellants claims and specification and McCain in view of Pen Windows. Specifically the Examiner's April 23, 2004 argument stated:

> Applicant's arguments filed 3/15/04 have been fully considered but they are not persuasive. At page 5 applicant argues the application programs which form part of the present invention provide the functionality to enable the pen events to be translated for use in both a mouse mode and a pen mode. Applicant did not specify which application programs perform this functionality. It is clear from applicants specification that pen windows 310, see figure 3a, is operating on the host computer in RC manager 350 to determine whether a pen event is a mouse mode event or

a pen mode event and it is clear view manager 200 in the hand held
device, see figures 3c and 4, attempts to anticipate which of those modes
is applicable for that pen event in order to provide quick local inking. See
page 22 line 31 to page 23 line 18. However, applicant failed to note the
claims do not claim this. Claim 1 claims at lines 16-20 the input
subsystem of the mobile user interface device, not the argued applications
program, provide the functionality to enable the pen events to be
translated for use in both a mouse mode and a pen mode.   Claim 6
claims at lines 5-10 the controller of the hand-held interface device, not
the argued applications program, provide the functionality to enable the
pen events to be translated for use in both a mouse mode and a pen
mode.   The claims do not make a distinction between the Pen Windows
310 operating in the host computer and the view manager 200 operating
in the hand held device. Since the Pen Windows 310 has overall control
over the determination of whether a pen event is a pen mode event or a
mouse mode event then the means plus function language is at least
claiming the Pen Windows 310 located in the host computer as the input
subsystem of claim 1 and the controller of claim 6. Thus, the claims need
to be amended to claim applicants invention of having view manager 200
located in the hand held device anticipate pen mode events and anticipate
mouse mode events while Pen Windows 310 located in the host computer
makes the final determination and if the anticipation was incorrect then
view manager 200 must correct any anticipated inking or mouse mode
with the host determined inking or mouse mode. Refer to figure 4 and its
accompanying description in the specification. Since the host computer
makes the actual determination and the hand held device merely
anticipates and since claim 1 does not claim where the subsystem is
located and since the input subsystem is actually located in both the hand
held device and the host computer then the rejection based upon McCain
and Pen Windows is maintained. Since claim 6 does not claim where the
controller is located and since the controller is actually located in both the
hand held device and the host computer then the rejection based upon
McCain and Pen Windows is maintained.

Appellants then asserts in the paragraph of the arguments spanning pages 7 and

8 that:

However, the examiner has failed to address the issue that the claims, as
currently amended, recite various features that are clearly not disclosed or
suggested in the McCain, et al. patent. For example, the claims all recite a
system which emulates, inter alia, a system for emulating a mouse mode,
and particularly, ***emulating the movement of a mouse and the clicking***

>   ***of a mouse button.*** Nowhere does the McCain, et al. patent disclose or
>   suggest a system for emulating the movement of and clicking of a mouse.
>   For these reasons, it is respectfully requested that the rejection of claims
>   1, 6, and 7 be reversed.

This assertion is not persuasive because applicants admission of the prior art "Pen

Windows", a Microsoft product, see appellants specification at page 8 line 31 to page 9

line 20, teaches the features missing from McCain as set forth in the rejection.

Appellants then asserts in the final two paragraphs on page 8 of the arguments

that "the Examiner has failed to make out a *prima facie* case of obviousness", made

reference to MPEP, §2143 and stated three criteria for an obvious rejection. This

assertion is not persuasive because McCain, U.S. Patent No. 5,309,351, in view of

applicants admission of Pen Windows teaches all of the claimed limitations as seen in

the final rejection incorporating the previous rejection reproduced above rejection and

the motivation provided in the final rejection incorporating the previous rejection

reproduced above "because McCain states at column 9 lines 2-3 that other touch

sensitive schemes may be used, thus, McCain is stating that known touch sensitive

schemes, such as Pen Windows, may by used in McCain's system since it is cheaper to

use commercial off the shelf software than to develop custom software." provides

motivation and reasonable expectation of success. MPEP 2143.02 Reasonable

Expectation of Success Is Required [R-6] at page 2100-141 of Eighth Edition Rev. 7,

July 2008:

>   >A rationale to support a conclusion that a claim would have been obvious is
>   that all the claimed elements were known in the prior art and one skilled in the art
>   could have combined the elements as claimed by known methods with no
>   change in their respective functions, and the combination would have yielded
>   nothing more than predictable results to one of ordinary skill in the art. *KSR*

International Co. v. Teleflex Inc., 550 U.S. ___, ___, 82 USPQ2d 1385, 1395
(2007); *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282, 189 USPQ 449, 453 (1976);
Anderson's-Black Rock, Inc. v. Pavement Salvage Co., 396 U.S. 57, 62-63, 163
USPQ 673, 675 (1969); *Great Atlantic & P. Tea Co. v. Supermarket Equipment
Corp.*, 340 U.S. 147, 152, 87 USPQ 303, 306 (1950).

The difference between McCain and applicants claims is the claimed ***emulating***

the movement of a mouse and the clicking of a mouse button when a user is using

the passive stylus which in view of Pen Windows is one of the finite number of ways

available to one of ordinary skill in the art to allow the user of the passive stylus to

interact with a mobile user interface device since according to appellants specification at

page 8 line 31 to page 9 line 20 describes "Pen Windows" as an industry standard.

KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1397 (U.S. 2007), U.S.

Supreme Court No. 04-1350 Decided April 30, 2007, 127 SCt 1727, 167 LEd2d 705. at

page 1397 of USPQ states:

> When there is a design need or market pressure to solve a problem and
> there are a finite number of identified, predictable solutions, a person of
> ordinary skill has good reason to pursue the known options within his or
> her technical grasp. If this leads to the anticipated success, it is likely the
> product not of innovation but of ordinary skill and common sense. In that
> instance the fact that a combination was obvious to try might show that it
> was obvious under §103.

In view of the above one of ordinary skill in the art would have found it obvious to

modify McCain in view of Pen Windows in order to give McCain's mobile user interface

device mouse functionality when a user is using a stylus because McCain states at

column 9 lines 2-3 that other touch sensitive schemes may be used, thus, McCain is

stating that known touch sensitive schemes, such as Pen Windows, may by used in

McCain's system since it is cheaper to use commercial off the shelf software than to

develop custom software. The modification of McCain with Pen Windows is by known methods resulting in no change in their respective functions and gives the predicable results of emulating the movement of a mouse and the clicking of a mouse button when a user is using the passive stylus in McCain. KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1397 (U.S. 2007), U.S. Supreme Court No. 04-1350 Decided April 30, 2007, 127 SCt 1727, 167 LEd2d 705. MPEP 2143.02 Reasonable Expectation of Success Is Required [R-6] at page 2100-141 of Eighth Edition Rev. 7, July 2008.

In summary Appellants arguments filed 10/09/2008 have been fully considered but they are not persuasive.

Appellants claims are open ended comprising claims which do not specify where the controller is located as discussed in the Examiner's April 23, 2004 arguments.

Appellants disclosed application programs which form part of the present invention provide the functionality to enable the pen events to be translated for use in both a mouse mode and a pen mode. Appellants claims do not specify which disclosed application programs perform this functionality. It is clear from appellants specification that pen windows 310, see figure 3a, is operating on the host computer 101 in RC manager 350 to determine whether a pen event is a mouse mode event or a pen mode event and it is clear view manager 200 in the hand held device, see figures 3c and 4, attempts to anticipate which of those modes is applicable for that pen event in order to provide quick local inking. See appellants specification at page 22 line 31 to page 23 line 18. However, appellant failed to note the claims do not claim this. Claim 1 claims at lines 16-20 the input subsystem of the mobile user interface device 100, not the

previously argued applications program (see appellants 3/15/2004 arguments), provide

the functionality to enable the pen events to be translated for use in both a mouse mode

and a pen mode.   Claim 6 claims at lines 5-10 the controller of the hand-held interface

device 100, not the previously argued applications program (see appellants 3/15/2004

arguments), provide the functionality to enable the pen events to be translated for use in

both a mouse mode and a pen mode.   The claims do not make a distinction between

the Pen Windows 310 operating in the host computer 101 and the view manager 200

operating in the mobile user interface device 100.   Since the Pen Windows 310 has

overall control over the determination of whether a pen event is a pen mode event or a

mouse mode event then the means plus function language is at least claiming the Pen

Windows 310 located in the host computer as the input subsystem of claim 1 and the

controller of claim 6.   As most eloquently stated in appeal decision in this application's

parent file, 08/300,500, Appeal No. 1998-0943 in the sentence spanning pages 8 and 9,

"It is axiomatic that, in proceedings before the PTO, claims in an application are to be

given their broadest reasonable interpretation consistent with the specification, and that

claim language should be read in light of the specification as it would be interpreted by

one of ordinary skill in the art.".   Thus, open ended comprising claims 1, 6, and 7 cover

the functionality of Pen windows operating in the claimed mobile user interface device

shown to be obvious by the modification of McCain in view of Pen Windows which

modification gives McCain's mobile user interface device mouse functionality when a

user is using a stylus.

Appellants claims fail to claim appellants invention of having view manager 200 located in the mobile user interface device 100 anticipate pen mode events and anticipate mouse mode events while Pen Windows 310 located in the host computer makes the final determination and if the anticipation was incorrect then view manager 200 must correct any anticipated inking or mouse mode with the host determined inking or mouse mode. Refer to figure 4 and its accompanying description in the specification. Since the host computer 101 makes the actual determination and the mobile user interface device 100 merely anticipates and since claim 1 does not claim where the subsystem is located and since the input subsystem is actually located in both the mobile user interface device 100 and the host computer 101 then the rejection based upon McCain and Pen Windows is maintained. Since claim 6 does not claim where the controller is located and since the controller is actually located in both the mobile user interface device 100 and the host computer 101 then the rejection based upon McCain and Pen Windows is maintained.

In conclusion claims 1, 6, and 7 would have been obvious at the time of applicants invention by McCain, U.S. Patent No. 5,309,351, in view of applicants admission of Pen Windows for the reasons given above since open ended comprising claims 1, 6, and 7 cover the functionality of Pen windows operating in the claimed mobile user interface device.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and

Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jeffery A. Brier/

Primary Examiner, Art Unit 2628

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Xia Wu/XIAO M. WU/

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